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To: (Name) Jeff Tuttle

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(Facsimile No.) 248-583-0582

From: (Examiner) Victor Hwang, Art Unit 3764

(Telephone No.) (703) 308-2865

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(Email) vhwang@uspto.gov

Re: Application Serial Number 10/043,592

Attorney Docket Number \_\_\_\_\_

NUMBER OF PAGES TRANSMITTED 5 (INCLUDING THIS COVER PAGE)

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APPLICATION NO.	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,392	01/14/2002	Jeffrey John-Carl Tuttle		6332
7590	09/30/2004			EXAMINER
Jeffrey J. Tuttle 15885 Coral Clinton Twp, MI 48035				HWANG, VICTOR KENNY
			ART UNIT	PAPER NUMBER
			3764	
DATE MAILED: 09/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/043,592	TUTTLE, JEFFREY JOHN-CARL <i>CA</i>	
	Examiner Victor K. Hwang	Art Unit 3784	
<p><i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i></p> <p><b>Period for Reply</b></p> <p><b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b></p> <p>- Extensions of time may be available under the provisions of 37 CFR 1.136(e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</p> <p>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</p> <p>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</p> <p>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any seemed patent term adjustment. See 37 CFR 1.704(e).</p>			
<b>Status</b>	<p>1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>14 January 2002</u>.</p> <p>2a) <input type="checkbox"/> This action is FINAL.      2b) <input checked="" type="checkbox"/> This action is non-final.</p> <p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>		
<b>Disposition of Claims</b>	<p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-10</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6) <input type="checkbox"/> Claim(s) _____ is/are rejected.</p> <p>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8) <input checked="" type="checkbox"/> Claim(s) <u>1-10</u> are subject to restriction and/or election requirement.</p>		
<b>Application Papers</b>	<p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner.</p> <p>Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p>Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> <p>11) <input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</p>		
<b>Priority under 35 U.S.C. § 119</b>	<p>12) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a) <input type="checkbox"/> All    b) <input type="checkbox"/> Some    c) <input type="checkbox"/> None of:</p> <p>1. <input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p> <p>* See the attached detailed Office action for a list of the certified copies not received.</p>		
<b>Attachment(s)</b>	<p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____</p> <p>4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-162)</p> <p>6) <input type="checkbox"/> Other: _____</p>		

Application/Control Number: 10/043,592  
Art Unit: 3764

Page 2  
Paper No. 20040928

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-5, drawn to the garment and adapter, classified in class 2, subclass 69.
  - II. Claims 6-10, drawn to the method of determining customized mass addition requirements to improve athletic performance, classified in class 482, subclass 148.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used for muscle strengthening exercises, not necessarily to improve athletic performance

2. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
3. A telephone call was made to Jeffrey Tuttle on September 23, 2004 to request an oral election to the above restriction requirement, but did not result in an election being made.

Application/Control Number: 10/043,592  
Art Unit: 3764

Page 3  
Paper No. 20040928

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-8635 until Nov. 2, 2004. After Nov. 2, the new telephone number will be (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

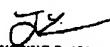
The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891 until Nov. 2, 2004. After Nov. 2, the new informal fax number will be the same as my telephone number, (571) 272-4976. The facsimile number for submitting all formal correspondence at this time is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on 703-308-2675.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
September 28, 2004



JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

9/28/04

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